
**State Government Operations &
Accountability Committee**

ESSB 5499

Brief Description: Clarifying and standardizing various election procedures.

Sponsors: Senate Committee on Government Operations & Elections (originally sponsored by Senators Kastama, Berkey, Fairley, Pridemore, Franklin, Haugen, Shin, Kohl-Welles, Doumit, Rasmussen and Keiser).

Brief Summary of Engrossed Substitute Bill

- Prescribes standards or procedures for distinguishing provisional ballots, processing absentee and provisional ballots, counting write-in ballots, inspecting and duplicating ballots, and canvassing returns;
- Requires identification from all persons voting at poll sites;
- Changes the vote differential required for manual recounts of statewide elections;
- Changes the certification of the general election from 15 to 20 days after the election;
- Makes changes to motor-voter registration requirements;
- Changes criminal penalties relating to destroying voter registrations and double voting;
and
- Requires county auditors to reconcile election numbers and make the report available to the public.

Hearing Date: 3/23/05

Staff: Marsha Reilly (786-7135).

Background:

The basic structure for conducting elections is prescribed by law. As the state's chief election officer, the Secretary of State (Secretary) is authorized to promulgate rules necessary to conduct an election, including procedures to ensure consistency among the counties in preparing ballots, operating vote tallying systems, and canvassing of primaries and elections.

The recent gubernatorial election was the closest statewide election in state history. After two recounts and two court battles in front of the state supreme court, Governor Gregoire was certified the winner by the Secretary. The margin of victory was 129 votes out of over 2.8 million votes cast. An election contest was filed in superior court and is pending as of this date.

Summary of Bill:

The bill creates and/or amends a number of election statutes.

Training. The signature verification process must be based on guidelines established by the Secretary in consultation with state and local law enforcement. Election personnel assigned to verify signatures must receive training on these guidelines.

Election reviews. Reviews of election-related policies, procedures and practices must be conducted at least once every three years, or as often as possible dependent upon staffing or budget levels. The county auditor or the county canvassing board must respond to the review report in writing listing steps to be taken to correct any problems. Before the next primary or general election, the Secretary must visit the county and verify that the corrective action was taken.

Voter registration records. County election officials are required to conduct random checks of the county record of registered voters against the statewide voter registration list to correct the list due to deaths or address changes.

Declarations of candidacy. Filing declarations of candidacy is changed to begin on the fourth Monday in June. The date for filing declarations of candidacy in existing law begins the fourth Monday in July.

Absentee Ballots. The name and address of the absentee voter must be printed on the larger return envelope. The return envelope must also have a secrecy flap that the voter may seal that will cover the voter's signature and return address.

The declaration on the return envelope must inform the voter that it is illegal to vote if he or she is not a U.S. citizen, if he or she has been convicted of a felony without restoration of voting rights, and to cast a ballot or sign an absentee envelope on behalf of another voter.

For service voters stationed outside the United States, the date on the return envelope attesting to when the ballot was voted shall determine the validity of the ballot. In the case of a military voter who does not receive his or her ballot until the day of or after the election, the ballot must be counted if it is received prior to final certification, including final certification of any recount, as long as an affidavit is attached attesting to this fact and is signed by the voter's commanding officer.

Processing return envelopes of absentee ballots may begin upon receipt. These ballots must be placed in secure locations from the time of delivery until opening.

If the signature on an absentee or provisional ballot return envelope does not match the voter's original registration record, the county auditor must notify the voter of this fact within three days either by telephone or in writing. The auditor must send the voter a new voter registration form and advise that in order for the ballot to be processed the form must be returned to the auditor with an updated signature by the day before certification of the primary or election, or the voter must

appear in person to update his or her voter registration form. The same process applies if the voter neglected to sign the return envelope. In this case, the auditor may mail a copy of the outer envelope which the voter may sign and return, or the voter may appear in person to sign the original envelope. A voter may not cure a missing or mismatched signature for purposes of counting the ballot in a recount.

A record must be kept of all ballots with mismatched signatures, including the date the voter was contacted or notice was mailed, as well as the date the voter signed the envelope, a copy of the envelope, or a new registration form. These records are public once the election has been certified by the county canvassing board.

Changes are made that will credit a voter casting an absentee ballot with voting only if the ballot was counted.

Provisional Ballots. Provisional ballots must be designed to be distinguishable from other ballots and incapable of being tabulated by poll site counting devices. Provisional ballots must be printed on colored paper or imprinted with a bar code that would identify the ballot as provisional.

Provisional ballots, like absentee ballots, shall be issued with an inner security envelope and an outer envelope. The outer envelope must include a place for the voter's name, registered address, date of birth, reason for voting a provisional ballot, precinct number and location where the voter has voted, and a space for the county auditor to list the disposition of the provisional ballot. The outer envelope must also have the same declaration required for absentee ballot outer envelopes, a space for the voter to sign the oath, and a summary of the applicable violations and associated penalty provisions.

The county auditor is required to examine and investigate all provisional ballots received to determine whether they may be counted. The same procedures are followed for provisional ballots as for absentee ballots when a voter does not sign the outer envelope or if the signature does not match the signature on the voter's registration card. County auditors are required to provide information regarding final disposition of provisional ballots through a free access system, such as a toll-free telephone number or a web site.

Ballot duplication. If a ballot is damaged or otherwise unreadable, the county auditor may refer the ballot to the canvassing board or duplicate the ballot if so authorized by the canvassing board. A ballot may only be duplicated if voter intent is clear. Duplication must be done by two or more people working together and an audit trail must be created for each duplicated ballot.

Voter identification at the polling location. Any person wanting to vote in person must provide identification. If the person cannot provide identification, they must vote a provisional ballot. The identification requirement is satisfied by a voter registration card, or any current and valid government-issued photo identification.

Write-in provisions. A write-in vote for a candidate whose name appears on the ballot is a valid vote, even if the voter also marked a vote for that candidate corresponding to the printed name, such as for an overvote. The write-in votes need not be tabulated unless the difference between the number of votes cast for the apparent winner and non-winner is less than the sum of the total number of write-in votes cast plus over and under votes; or a manual recount is conducted for that office.

Re-canvass and rejection of ballots. The canvassing board may recanvass ballots during the initial counting process or during any subsequent recount if the board finds that election staff has made an error regarding the treatment or disposition of a ballot.

A ballot is not considered rejected until the canvassing board has rejected the ballot individually, or the ballot was included in a batch or on a report of ballots that was rejected in its entirety by the canvassing board.

Recount provisions. With regards to recounts, the canvassing board determines the date at which the recount will be conducted and the Secretary may require that the amended abstracts be certified by each canvassing board on a uniform date.

The vote difference necessary to trigger a manual recount for statewide elections is changed from 150 votes to 1,000 votes and less than one-quarter of one percent of the total votes cast.. For all other elections a manual recount shall be conducted if the vote margin is less than 150 votes and also less than one-quarter of one percent of the total votes cast.

Certification. The deadline for canvassing boards to complete the canvass and certify the results of a general election is changed from 15 days to 20 days. The Secretary is authorized to adopt rules to exclude Thanksgiving and the day after from the 20 day period. After the Secretary receives election returns from all counties, the Secretary must canvass and certify the returns of the election as to candidates for state offices, federal offices, and all other candidates whose districts extend into multiple counties. The Secretary must transmit a copy of the certification to the Governor and the Legislature.

Reconciliation provisions. No later than thirty days after the final certification, the county auditor must prepare and make publicly available an election reconciliation report that discloses, at a minimum, the number of ballots counted; the number of voters credited with voting; the number of provisional and absentee ballots issued, counted, or rejected; the number of federal write-in ballots counted; and the number of ballots sent to overseas voters and the number of such ballots counted. The report may include any other information the county auditor determines to be necessary to the process of reconciling the number of votes counted with the number of voters credited with voting.

Election contests. An affidavit alleging that an error or omission has occurred or is about to occur in the issuance of a certificate of election must be filed in court no later than 10 days following official certification, or in the case of a recount, no later than 10 days after official certification of the amended abstract. Existing law requires such an affidavit to be filed no later than 10 days following the issuance of a certificate of election.

Transmittal of cumulative returns: Cumulative returns produced by the county auditors for state, judicial, and federal offices must be immediately transmitted by electronic means to the Secretary.

Criminal and civil infraction provisions: Any person who destroys, alters, defaces, or discards a completed voter registration form or signature affidavit is guilty of a class C felony. It is not a criminal act if the voter who completed the form destroys it, or the county auditor or registration assistant destroys it as authorized by law.

The penalty for intentionally or knowingly double voting is changed from a gross misdemeanor to a class C felony. A person registered in another state and who intentionally or knowingly votes or attempts to vote in this state is also guilty of a class C felony.

Any person who recklessly or negligently votes or attempts to vote more than once, or who is registered in another state and who recklessly or negligently votes or attempts to vote in Washington has committed a class 1 civil infraction which stipulates, by law, a maximum fine of \$250 per infraction. The county prosecuting attorney is authorized to enforce such civil infractions.

Motor-voter registration: Licensing agents must ask and confirm whether the applicant is a United States citizen, and whether the applicant is at least 18 years of age. If the applicant answers in the negative to either question, the agent shall not provide the applicant with a voter registration form.

Appropriation: None.

Fiscal Note: Requested on March 18, 2005..

Effective Date: The bill takes effect 90 days after adjournment of session in which bill is passed.